

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 20-1971V

EILEEN SMESTAD,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: August 10, 2023

Jessica Olins, Maglio Christopher & Toale, PA, Washington, DC, for Petitioner.

Matthew Murphy, U.S. Department of Justice, Washington, DC, for Respondent.

RULING ON ENTITLEMENT¹

On December 23, 2020, Eileen Smestad filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a right shoulder injury related to vaccine administration (“SIRVA”) causally related to the influenza (“flu”) vaccine she received on October 25, 2019. Petition at 1, ¶¶ 6, 16, 18. Petitioner further alleges that she suffered the residual effects of her SIRVA for more than six months and that neither she nor any other party has filed a civil case or received compensation for her SIRVA

¹ Because this Ruling contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Ruling will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

injury. *Id.* at ¶¶ 17, 20-21. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On March 14, 2023, I issued a factual ruling, finding the flu vaccine was most likely administered in Petitioner's right shoulder, as alleged, and that onset of Petitioner's pain occurred within 48 hours of vaccination. ECF 33. After Petitioner conveyed her settlement demand on August 3, 2023 (ECF No. 40), Respondent filed an amended Rule 4(c) Report, indicating that he "will not contest that [P]etitioner suffered SIRVA as defined by the Vaccine Injury Table." Amended Rule 4(c) Report, filed Aug. 9, 2023, at 9, ECF No. 41. He further indicates that "[b]ased on the record as it now stands and subjection to his right to appeal the Findings of Fact, [he] does not dispute that [P]etitioner has satisfied all legal prerequisites for compensation under the Act." *Id.*

In view of Respondent's position and the evidence of record, I find that Petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master